

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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JIAN LIN a/k/a Remus Lin,

Petitioner,

05 Civ. 2707 (PKC) (RLE)

MEMORANDUM  
AND ORDER

-against-

BRIAN FISCHER,

Respondent.  
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P. KEVIN CASTEL, District Judge:

On October 5, 2000, pro se petitioner Jian Lin was convicted in New York Supreme Court, New York County, of three counts of first degree kidnapping. Petitioner received a sentence of three concurrent indeterminate terms of 25 years to life imprisonment. (Docket No. 2, Pet. ¶¶ 1-5) Petitioner appealed his sentence, and it was affirmed. See People v. Lin, 766 N.Y.S. 2d 845 (App. Div. 1st Dep't 2003). Petitioner then sought leave to appeal to the New York Court of Appeals, and leave was denied. See People v. Lin, 808 N.E.2d 1290 (N.Y. 2004).

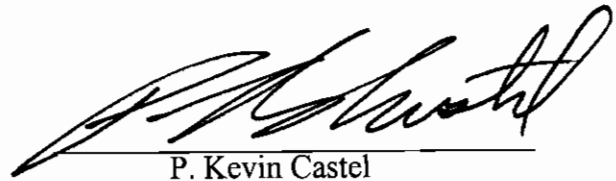
Petitioner now seeks a writ of habeas corpus pursuant to 28 U.S.C. § 2254, asserting that he received ineffective assistance of counsel because his trial counsel failed to: (1) communicate or discuss with him the evidence, possible defenses, or plea offers; (2) investigate several potential defense witnesses; and (3) otherwise sufficiently prepare for trial. (Pet. ¶ 13) I referred the petition to the Honorable Ronald L. Ellis, United States Magistrate Judge. On November 16, 2006, Judge Ellis issued a Report and Recommendation ("R & R") in which he recommended that the Court deny the petition.

The R & R advised the parties that they had ten days from service of the R & R to file any objections, and that failure to timely file such objections would result in any objections being waived. As of the date of this Order, no such objections have been filed. Therefore, petitioner has waived the right to object to the R & R. See, e.g., Frank v. Johnson, 968 F.2d 298, 300 (2d Cir.), cert. denied, 506 U.S. 1038 (1992).

Having reviewed Judge Ellis's R & R, I find it to be well reasoned and thoroughly grounded in law. Judge Ellis reviewed petitioner's submissions, the transcripts of petitioner's state court proceedings, and the case law governing the issues raised in the petition. Judge Ellis properly concluded that petitioner has not demonstrated that his trial counsel failed to provide effective assistance in preparation for or during the trial, or that any prejudice resulted from the allegedly deficient acts or omissions by his attorney. The R & R is therefore adopted in its entirety, and the petition is DENIED. The Clerk is directed to enter judgment in favor of the respondent.

Petitioner has not made a substantial showing of the denial of a constitutional right and, accordingly, a certificate of appealability will not issue. 28 U.S.C. § 2253; see Lozada v. United States, 107 F.3d 1011, 1067-17 (2d Cir. 1997), abrogated on other grounds by United States v. Perez, 129 F.3d 255, 259-60 (2d Cir. 1997). The Court certifies pursuant to 28 U.S.C. § 1915(a)(3) that any appeal from this order would not be taken in good faith. See Coppedge v. United States, 369 U.S. 438 (1962).

SO ORDERED.

A handwritten signature in black ink, appearing to read 'P. Kevin Castel', is written over a horizontal line.

P. Kevin Castel  
United States District Judge

Dated: New York, New York  
January 11, 2007